

108TH CONGRESS
1ST SESSION

S. 908

To establish the United States Consensus Council to provide for a consensus building process in addressing national public policy issues, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2003

Ms. COLLINS (for herself, Mr. DORGAN, Mr. SANTORUM, and Mr. CONRAD) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To establish the United States Consensus Council to provide for a consensus building process in addressing national public policy issues, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “United States Con-
5 sensus Council Act of 2003”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) throughout the Nation there is increasing
9 success in the use of collaborative and consensus-

1 building approaches to address critical public policy
2 issues at the national, State, and local levels;

3 (2) there is a need for a national Council that
4 serves the Nation by promoting and conducting con-
5 sensus-building processes that primarily address leg-
6 islative policy issues of national importance;

7 (3) such a Council may enroll specific stake-
8 holders, both public and private, to build agreements
9 that ultimately may be implemented by Congress,
10 Federal agencies, or other policymaking bodies;

11 (4) such a Council will strive to create public
12 policy agreements that integrate differing perspec-
13 tives into highest common denominator solutions;

14 (5) the establishment of such a Council is an
15 appropriate investment by the people of this Nation
16 in a capacity that works in cooperation with Con-
17 gress and others to assist the current public policy-
18 making processes on selected issues;

19 (6) the existence of such a Council could con-
20 tribute especially to resolving differences on conten-
21 tious policy issues, preventing polarization on emerg-
22 ing policy issues and addressing issues of complexity
23 that involve multiple parties and perspectives;

24 (7) the establishment of such a Council may
25 contribute significantly to a renewed sense of civility

1 and respect for differences, while at the same time
2 promoting vigorous interchange and open commu-
3 nications among those with differing points of view;
4 and

5 (8) the Council may become a repository of wis-
6 dom and experience on public policy collaboration
7 and consensus-building that can be shared with pub-
8 lic and private sector policymakers and the public in
9 the interest of promoting more effective public policy
10 and the increased use of collaborative processes.

11 (b) PURPOSE.—The purpose of this Act is to estab-
12 lish an independent, nonprofit, national Council to serve
13 the Nation by seeking to produce consensus on policy
14 issues of national importance through collaborative proc-
15 esses.

16 **SEC. 3. DEFINITIONS.**

17 In this Act, the term—

18 (1) “Board” means the Board of Directors of
19 the Council;

20 (2) “Council” means the United States Con-
21 sensus Council established under this Act; and

22 (3) “Director” means an individual appointed
23 to the Board of Directors of the Council.

1 **SEC. 4. UNITED STATES CONSENSUS COUNCIL.**

2 (a) ESTABLISHMENT.—There is established the
3 United States Consensus Council.

4 (b) DISTRICT OF COLUMBIA NONPROFIT CORPORA-
5 TION; STATUS; RESTRICTIONS.—The Council shall be es-
6 tablished as an independent nonprofit corporation under
7 the District of Columbia Nonprofit Corporation Act (D.C.
8 Code, section 29–301 et seq.). Upon establishment under
9 that Act, the Council shall conform to all the requirements
10 applicable to a nonprofit corporation so established in the
11 District and shall be subject to such oversight by the Dis-
12 trict of Columbia as is applicable to a nonprofit corpora-
13 tion so established. The Council is not an agency or instru-
14 mentality of the United States.

15 (c) TRADE NAME AND TRADEMARK RIGHTS; VESTED
16 RIGHTS PROTECTED; CONDITION FOR USE OF FEDERAL
17 IDENTITY.—

18 (1) IN GENERAL.—The Council has the sole
19 and exclusive right to use and to allow or refuse oth-
20 ers the use of the term “United States Consensus
21 Council” and the use of any official United States
22 Consensus Council emblem, badge, seal, and other
23 mark of recognition or any colorable simulation
24 thereof.

25 (2) UNITED STATES REFERENCES.—The Coun-
26 cil may use “United States” or “U.S.” or any other

1 reference to the United States Government or Na-
 2 tion in its title or in its corporate seal, emblem,
 3 badge, or other mark of recognition or colorable sim-
 4 ulation thereof in any fiscal year only if there is an
 5 authorization of appropriations, or appropriations,
 6 for the Council for such fiscal year provided by law.

7 **SEC. 5. POWERS AND DUTIES.**

8 (a) IN GENERAL.—The Council may exercise the
 9 powers conferred upon a nonprofit corporation by the Dis-
 10 trict of Columbia Nonprofit Corporation Act (D.C. Code,
 11 section 29–301 et seq.) consistent with this Act.

12 (b) DESCRIPTION OF SPECIFIC ACTIVITIES.—

13 (1) IN GENERAL.—The Council may—

14 (A) develop and conduct processes to build
 15 consensus on national policy issues;

16 (B) enter into formal and informal rela-
 17 tionships with other institutions, public and pri-
 18 vate, for purposes not inconsistent with this
 19 Act;

20 (C) identify particular public policy issues
 21 as to which the Council’s expertise would be
 22 useful in building a consensus;

23 (D) subject to paragraph (2), coordinate
 24 with, make referrals to and receive referrals
 25 from, other conflict or dispute resolution instru-

1 mentalities of the United States, including the
 2 United States Institute for Environmental Con-
 3 flict Resolution or the Federal Mediation and
 4 Conciliation Service; and

5 (E) develop and apply criteria for the pur-
 6 pose of determining whether the Council will
 7 enter into a consensus-building process on a
 8 particular issue.

9 (2) LIMITATIONS ON CERTAIN ACTIVITIES.—

10 The Council shall consult and coordinate with the
 11 United States Institute for Environmental Conflict
 12 Resolution and the Federal Mediation and Concilia-
 13 tion Service to ensure that the activities of the
 14 Council do not—

15 (A) duplicate the activities of the Institute
 16 or Service; or

17 (B) interfere with the Institute or Service
 18 in carrying out their respective statutory re-
 19 sponsibilities.

20 (3) CONSENSUS-BUILDING PROCESS.—With re-
 21 spect to each consensus-building process, the Coun-
 22 cil—

23 (A) shall consider such factors as the de-
 24 gree of congressional interest in the issue, as
 25 well as issue complexity, cost, ripeness, likeli-

1 hood of participation by key stakeholders, and
2 any other relevant indices that may assist the
3 Council in determining whether to enter into a
4 particular consensus process;

5 (B) may identify any appropriate
6 facilitator for the negotiation process;

7 (C) may identify the key stakeholders in-
8 volved or interested in the outcome of a par-
9 ticular issue, including those individuals who
10 have the authority to implement the rec-
11 ommendations that result from the Council's
12 consensus building processes;

13 (D) may develop and publish a common set
14 of facts to inform and assist consensus-building
15 processes;

16 (E) may establish ground rules, including
17 matters related to confidentiality, representa-
18 tion of counsel, and ex parte communications;

19 (F) may work to promote consensus among
20 the stakeholders by methods such as negotia-
21 tion, discussion, meetings, and any other proc-
22 ess of dispute resolution;

23 (G) may build and construct agreements
24 among stakeholders;

1 (H) may issue a report reflecting the re-
2 sults of consideration by the Council on con-
3 sensus-building efforts; and

4 (I) may provide training and technical as-
5 sistance on any issue within the Council's com-
6 petence.

7 (4) OTHER ACTIVITIES.—The Council also may
8 engage in any other activity consistent with its mis-
9 sion.

10 (c) GENERAL AUTHORITY.—The Council may do any
11 and all lawful acts necessary or desirable to carry out the
12 objectives and purposes of this Act.

13 (d) GUIDELINES FOR COUNCIL OPERATIONS.—As
14 necessary, the Council shall develop guidelines, through its
15 bylaws or otherwise, to address—

16 (1) policies relating to personal service con-
17 tracts;

18 (2) standards to ensure that the Council, its Di-
19 rectors, employees, and agents, avoid conflicts of in-
20 terest that may arise;

21 (3) fundraising policies, donor development pro-
22 grams, and matters related to the acceptance of pri-
23 vate donations;

24 (4) procedures to ensure that all participants in
25 a consensus-building process are informed of—

1 (A) the sources of funding of the Council;
2 and

3 (B) the source and purpose of any dona-
4 tion for which a purpose is specified when do-
5 nated to the Council;

6 (5) the duties and responsibilities of the Coun-
7 cil, its Board, officers, employees, and agents; and

8 (6) the establishment of advisory committees,
9 councils, or other bodies, as the efficient administra-
10 tion of the business and purposes of the Council may
11 require.

12 **SEC. 6. BOARD OF DIRECTORS.**

13 (a) VESTED POWERS.—The powers of the Council
14 shall be vested in a Board of Directors unless otherwise
15 specified in this Act or delegated by the Board.

16 (b) APPOINTMENTS.—The Board of Directors shall
17 consist of 12 voting members as follows:

18 (1) Four individuals, including private citizens
19 or State or local employees, no more than 2 of whom
20 shall be of the same political party, appointed by the
21 President. The President shall appoint members of
22 the opposing party only on the recommendation of
23 the leaders of Congress from that party.

1 (2) Two individuals, including private citizens
2 or State or local employees, appointed by the Major-
3 ity Leader of the Senate.

4 (3) Two individuals, including private citizens
5 or State or local employees, appointed by the Minor-
6 ity Leader of the Senate.

7 (4) Two individuals, including private citizens
8 or State or local employees, appointed by the Speak-
9 er of the House of Representatives.

10 (5) Two individuals, including private citizens
11 or State or local employees, appointed by the Minor-
12 ity Leader of the House of Representatives.

13 (c) TERM OF OFFICE: COMMENCEMENT AND TERMI-
14 NATION, INTERIM AND REMAINDER SERVICE, LIMITA-
15 TION.—

16 (1) TERM OF OFFICE.—Directors appointed
17 under subsection (b) of this section shall be ap-
18 pointed to 4-year terms, with no Director serving
19 more than 2 consecutive terms, except that—

20 (A) as designated by the President, the
21 terms of 2 of the 4 Directors initially appointed
22 under subsection (b)(1) shall be 2 years, subject
23 to appointment to no more than 2 additional 4-
24 year terms in the manner set forth in this sec-
25 tion;

1 (B) as designated by the Speaker of the
2 House of Representatives, the terms of the 2
3 Directors initially appointed under subsection
4 (b)(4) shall be 2 years, subject to appointment
5 to no more than 2 additional 4-year terms in
6 the manner set forth in this section; and

7 (C) as designated by the Minority Leader
8 of the House of Representatives, the terms of
9 the 2 Directors initially appointed under sub-
10 section (b)(5) shall be 2 years, subject to ap-
11 pointment to no more than 2 additional 4-year
12 terms in the manner set forth in this section.

13 (2) REMAINDER SERVICE.—Any Director ap-
14 pointed to the Board to replace a Director whose
15 term has not expired shall be appointed to serve the
16 remainder of that term.

17 (3) PRESIDENT OF COUNCIL.—The President of
18 the Council shall serve as a nonvoting Director of
19 the Board.

20 (d) QUALIFICATIONS.—

21 (1) IN GENERAL.—A demonstrated interest in
22 the mission of the Council or expertise in consensus
23 building shall be considered in appointments made
24 under this section.

1 (2) NON-FEDERAL EMPLOYEES.—No Director
2 may be an officer or employee of the Federal Gov-
3 ernment, including a Member of Congress.

4 (e) REMOVAL FROM OFFICE.—A Director may be re-
5 placed by the appointing official or may be removed by
6 a process to be established in the Council's bylaws.

7 (f) MEETINGS; NOTICE IN FEDERAL REGISTER.—
8 Meetings of the Board shall be conducted pursuant to the
9 Council's bylaws, except as provided in the following:

10 (1) INITIAL ORGANIZATIONAL MEETING.—

11 (A) IN GENERAL.—The Board shall hold
12 an initial organizational meeting within 60 days
13 after the appointment of at least $\frac{1}{3}$ of the
14 members under this section. The purpose of the
15 meeting shall be to provide for the incorpora-
16 tion of the Council as a non-profit corporation
17 in the District of Columbia as provided under
18 section 4 and to adopt the interim bylaws and
19 guidelines required under this section for its op-
20 eration.

21 (B) REQUIRED RATIFICATION OF ACTIONS
22 OF ORGANIZATIONAL MEETING.—The Articles
23 of Incorporation and the interim bylaws and
24 guidelines adopted in the initial organizational
25 meeting shall be effective only until the first

1 meeting of the Board after the appointment of
2 all members under this section, at which time
3 the articles, bylaws, or guidelines may be rati-
4 fied or modified by the Board.

5 (2) MEETINGS; QUORUM.—The Board shall
6 meet at least semiannually. A majority of the Direc-
7 tors in office shall constitute a quorum for any
8 Board meeting.

9 (3) OPEN MEETINGS.—All official governing
10 meetings of the Board shall be open to public obser-
11 vation and shall be preceded by reasonable public
12 notice. Notice in the Federal Register shall be
13 deemed to be reasonable public notice for purposes
14 of the preceding sentence. In exceptional cir-
15 cumstances, the Board may close those portions of
16 a meeting, upon a majority vote of Directors present
17 and with the vote taken in public session, which are
18 likely to disclose information affecting or relating to
19 the status of individual Directors or employees of
20 the Council or to ongoing litigation to which the
21 Council is a party.

22 (g) COMPENSATION.—

23 (1) IN GENERAL.—Subject to paragraphs (2)
24 and (3), a Director may be compensated at a rate
25 not to exceed the daily equivalent of the rate payable

1 for a position at level IV of the Executive Schedule
 2 under section 5315 of title 5, United States Code,
 3 for each day during which that Director is engaged
 4 in the performance of the duties of the Council.

5 (2) DIRECTORS WHO MAY BE COMPENSATED.—

6 A Director may be compensated under paragraph
 7 (1), if that Director notifies the Board of an election
 8 to receive compensation.

9 (3) EFFECTIVE DATE.—A Director shall be
 10 compensated under this subsection for the perform-
 11 ance of duties after the date of notification under
 12 paragraph (2).

13 (h) TRAVEL EXPENSES.—While away from home or
 14 regular place of business in the performance of duties for
 15 the Board, a Director may receive reasonable travel, sub-
 16 sistence, and other necessary expenses.

17 **SEC. 7. OFFICERS AND EMPLOYEES.**

18 (a) PRESIDENT OF THE COUNCIL.—There shall be
 19 a President who shall be appointed by the Board. The
 20 President shall be the chief executive officer of the Council
 21 and shall carry out or cause to be carried out the functions
 22 of the Council subject to the supervision and direction of
 23 the Board.

24 (b) COMPENSATION OF PRESIDENT OF THE COUN-
 25 CIL.—The President of the Council shall be compensated

1 at an annual rate of pay not to exceed the rate payable
2 for a position at level II of the Executive Schedule under
3 section 5313 of title 5, United States Code.

4 (c) ASSIGNMENT OF FEDERAL OFFICERS OR EM-
5 PLOYEES TO THE COUNCIL.—The Council may request
6 the assignment of any Federal officer or employee to the
7 Council by an appropriate executive department, agency,
8 or congressional official or Member of Congress and may
9 enter into an agreement for such assignment, if the af-
10 fected officer or employee agrees to such assignment and
11 such assignment causes no prejudice to the salary, bene-
12 fits, status, or advancement within the department, agen-
13 cy, or congressional staff of such officer or employee. The
14 assigning office shall be fully reimbursed by the Council
15 for the costs associated with such an assignment. The as-
16 signed officer or employee shall remain an officer or em-
17 ployee of the United States during the course of such as-
18 signment.

19 (d) PERSONNEL.—The President of the Council, with
20 the approval of the Board, may appoint and fix the com-
21 pensation of such additional personnel as determined nec-
22 essary. The President and employees of the Council shall
23 not be employees of the United States.

1 (e) COMPENSATION FOR SERVICES OR EXPENSES;
2 PROHIBITION ON LOANS TO COUNCIL DIRECTORS AND
3 PERSONNEL.—

4 (1) IN GENERAL.—No part of the financial re-
5 sources, income, or assets of the Council or of any
6 legal entity created by the Council shall inure to any
7 agent, employee, officer, or Director or be distribut-
8 able to any such person during the life of the cor-
9 poration or upon dissolution or final liquidation.
10 Nothing in this section may be construed to prevent
11 the payment of reasonable compensation for services
12 or expenses to the Directors, officers, employees, and
13 agents of the Council in amounts approved in ac-
14 cordance with this Act.

15 (2) LOANS.—The Council shall not make loans
16 to its Directors, officers, employees, or agents.

17 **SEC. 8. PROCEDURES AND RECORDS.**

18 (a) MONITORING AND EVALUATION OF PROGRAMS.—
19 The Council shall monitor and evaluate and provide for
20 independent evaluation if necessary of programs supported
21 in whole or in part under this Act to ensure that the provi-
22 sions of this Act and the bylaws, rules, regulations, and
23 guidelines promulgated under this Act are adhered to.

24 (b) ACCOUNTS OF RECEIPTS AND DISBURSEMENTS;
25 FINANCIAL REPORTS.—

1 (1) IN GENERAL.—The Council shall keep com-
2 plete books and records of accounts, including—

3 (A) separate and distinct accounts of re-
4 ceipts and disbursements of Federal funds and
5 donations; and

6 (B) records of the purpose of any donation
7 for which a purpose is specified when donated
8 to the Council.

9 (2) ANNUAL FINANCIAL REPORTS.—The Coun-
10 cil’s annual financial report shall identify the use of
11 all funding and shall present a clear description of
12 the full financial situation of the Council.

13 (c) MINUTES OF PROCEEDINGS.—The Council shall
14 keep minutes of the proceedings of its Board and of any
15 committees having authority under the Board.

16 (d) RECORD AND INSPECTION OF REQUIRED
17 ITEMS.—

18 (1) IN GENERAL.—The Council shall keep a
19 record of—

20 (A) the names and addresses of its Direc-
21 tors, copies of this Act, and any other Act relat-
22 ing to the Council;

23 (B) all Council bylaws, rules, regulations,
24 and guidelines;

25 (C) required minutes of proceedings;

1 (D) all applications and proposals and
2 issued or received contracts and grants; and

3 (E) financial records of the Council.

4 (2) INSPECTION.—All items required by this
5 subsection may be inspected by any Director or any
6 agent or attorney of a Director for any proper pur-
7 pose at any reasonable time.

8 (e) AUDITS.—The accounts of the Council shall be
9 audited annually in accordance with generally accepted au-
10 diting standards by independent certified public account-
11 ants or independent licensed public accountants, certified
12 or licensed by a regulatory authority of a State or other
13 political subdivision of the United States. The audit shall
14 be conducted at the place or places where the accounts
15 of the Council are normally kept. All books, accounts, fi-
16 nancial records, files, and other papers, things, and prop-
17 erty belonging to or in use by the Council and necessary
18 to facilitate the audit shall be made available to the person
19 or persons conducting the audit, and full facilities for
20 verifying transactions with the balances or securities held
21 by depositories, fiscal agents, and custodians shall be af-
22 forded to such person or persons.

23 (f) ANNUAL REPORT TO CONGRESS; COPIES FOR
24 PUBLIC.—

1 (1) IN GENERAL.—The Council shall provide a
2 report to the President and to each House of Con-
3 gress not later than 6 months following the close of
4 the fiscal year for which the audit is made.

5 (2) CONTENTS.—Each report under this sub-
6 section shall include—

7 (A) a statement of the Council’s activities
8 for the prior year;

9 (B) a copy of the audit report prepared
10 under subsection (e); and

11 (C) a disclosure statement of—

12 (i) the source of all funds received by
13 the Council in the prior year; and

14 (ii) the purpose for which the funds
15 were contributed or made available.

16 (3) PUBLIC AVAILABILITY.—Each report under
17 this subsection shall be made available to the public.

18 (g) GAO REVIEW.—The annual report submitted
19 under subsection (f) shall be submitted simultaneously to
20 the General Accounting Office for its review.

21 **SEC. 9. PROHIBITION ON LOBBYING ACTIVITIES.**

22 (a) DEFINITIONS.—In this section—

23 (1) the terms “covered executive branch offi-
24 cial”, “covered legislative branch official”, and “cli-

ent” have the meanings given under section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602);

(2) the term “lobbying activities” has the meaning given under section 3(7) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602(7)), except the definition of the term “lobbying contact” shall be applied as modified under this section; and

(3) the term “lobbying contact”—

(A) has the meaning given under paragraph (8) of section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602(8)), except that a communication made on behalf of a client referred to under subparagraph (A) of that paragraph shall apply instead to a communication made on behalf of the Council; and

(B) does not include a communication between the Council and a covered executive branch official or covered legislative branch official relating to—

(i) appropriations for the Council; or

(ii) proposed legislation directly affecting the Council.

(b) PROHIBITIONS.—The Council may not—

(1) engage in lobbying activities; or

(2) be a client.

1 **SEC. 10. FUNDING.**

2 (a) AUTHORIZATION OF APPROPRIATIONS.—For the
3 purpose of carrying out this Act, there are authorized to
4 be appropriated \$2,000,000 for fiscal year 2003 and such
5 sums as may be necessary for fiscal years 2004 through
6 2008.

7 (b) AVAILABILITY.—Funds appropriated under the
8 authority of subsection (a) shall remain available until ex-
9 pended.

10 (c) AVAILABILITY OF FUNDS FROM FISCAL YEAR
11 2003.—Any funds authorized to be made available
12 through the General Services Administration during fiscal
13 year 2003 for the purpose of carrying out this Act shall
14 remain available until expended.

15 (d) INVESTMENT OF FUNDS.—Funds appropriated to
16 the Council shall be invested only in instruments backed
17 by the full faith and credit of the United States or in a
18 federally insured financial institution. Any interest earned
19 on such investments shall be used only for the purposes
20 set out in this Act.

21 **SEC. 11. DISSOLUTION OR LIQUIDATION.**

22 Upon dissolution or final liquidation of the Council,
23 all funds appropriated by the United States to the Council
24 including any interest attributable to such funds, but not
25 any other funds, shall revert to the United States Treas-
26 ury. Other funds held by the Council shall be handled

- 1 under the laws of the District of Columbia applicable to
- 2 nonprofit corporations.

